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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/990,570

11/21/2001

John M. Fenderson

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2661

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7590

10/06/2009

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EXAMINER

ARNOLD, ERNST V

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

10/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/990,570	<b>Applicant(s)</b> FENDERSON ET AL.	
	<b>Examiner</b> ERNST V. ARNOLD	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 25-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-40 is/are rejected.
- 7) ☒ Claim(s) 28 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 08/236732.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/13/09 has been entered.

Claims 1-24 have been cancelled. Claims 25-40 are new.

#### **Withdrawn rejections:**

Applicant's amendments and arguments filed 8/13/09 are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed below is herein withdrawn. Claims 24-40 were rejected under 35 U.S.C. 103(a) as being unpatentable over Harr et al. (Weeds 1991) in view of Lee (US 5,336,662) and Markley et al. (US 4,824,475). Applicant's amendments and Declaration filed under 1.132 are sufficient to overcome this rejection. Accordingly, it is withdrawn by the Examiner.

***Specification***

***Certificate of Correction***

The certificate of correction must be incorporated into patent in double column format w/o brackets, underlining or italics. SEE MPEP 1411.01 [R-7]; 1454 VI (C).

Correction is requested.

### ***Oath/Declaration***

The reissue oath/declaration filed with this application is defective because the error which is relied upon to support the reissue application is not an error upon which a reissue can be based. See 37 CFR 1.175(a)(1) and MPEP § 1414.

The reissue declaration filed on 11/21/01 states:

At least one error upon which reissue is based is described as follows:

The issued patent 5,990,046 is partly inoperative because Applicants claimed less than they had a right to claim, thereby jeopardizing the complete scope of protection available for the invention as originally disclosed and described in the patent. For example, in issued Claims 2 and 6, Applicants claimed less than they had a right to claim by claiming the combination of dimethenamid, a triketone or dione herbicide and a triazine herbicide without including claims to the combination of dimethenamid and either a triketone or dione herbicide or a triazine herbicide. In addition, Applicants claimed less than they had a right to claim by claiming the weight ratio in Claim 1 and the application rate in Claim 3. In contrast to the issued claims, the newly presented claims correct this error by claiming the combination of dimethenamid and a second herbicide selected from the group consisting of a triketone or dione herbicide and a triazine herbicide and by not requiring a particular weight ratio or application rate.

The patented claims in US 5990046 disclose:

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**What is claimed is:**

**1. (Amended) A herbicidal composition comprising a herbicidally effective aggregate amount of dimethenamid and a second herbicide selected from the group consisting of triketone or dione herbicides and triazine herbicides [and**  
50 **dimethenamid in a weight ratio between 1:2 and 1:10].**

The claims filed 11/21/01 broadened the claims by deleting the weight ratio:

1. (Amended) A herbicidal composition comprising a herbicidally effective aggregate amount of dimethenamid and a second herbicide selected from the group consisting of triketone or dione herbicides and triazine herbicides.

However, the claims filed 8/13/09 re-instate the weight ratio limitation:

25. (New) A herbicidal composition comprising a herbicidally effective aggregate amount of a triketone herbicide and dimethenamid in a weight ratio between 1:2 and 1:10.

Since the instant claims have been substantially amended, a new error is required. The nature of the defect(s) in the Oath is set forth in the discussion above in this Office action.

Claims 25-40 are rejected as being based upon a defective reissue Oath under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

### ***Claim Objections***

Claims 28 and 31 are objected because in accordance with the certificate of correction the [3,2] should be amended to recite [3,2,1]. See the Certificate of correction revisions of issued patent claim 4.

***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernst V. Arnold whose telephone number is 571-272-8509. The examiner can normally be reached on M-F (7:15 am-4:45 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Ernst V Arnold/

Primary Examiner, Art Unit 1616